



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 15, 2018

CASE NUMBER: 2018OPA-0428

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that all of the Named Employees may have failed to de-escalate this incident prior to using force.



ADMINISTRATIVE NOTES:

Both the Named Employees' chain of command and the Force Review Board made OPA referrals relating to this case. The chain of command referral, which involves allegations of excessive force, professionalism, and the failure to de-escalate, is reviewed in 2018OPA-0319. The referral by the Force Review Board, which also concerns de-escalation, is reviewed here. While the cases are reviewed separately, the analysis concerning de-escalation is identical.

STATEMENT OF FACTS:

The Complainant was arrested by officers assigned to the Southwest Precinct Anti-Crime Team (ACT). The Complainant was arrested because he had an active felony warrant. He was observed by Named Employees #4 (NE#4) and another officer. The officers told the Complainant to stop and that he was under arrest, but he attempted to flee from them. While chasing the Complainant, NE#4 told him to "get on the fucking ground." After a short foot pursuit, the Complainant went down to the ground on his own power and the officers caught up to him.

The officers attempted to handcuff him. Named Employee #2 (NE#2), who had arrived at the scene, applied the handcuffs. The Complainant pulled his arm away and further resisted, even after being given orders to stop. NE#2 then finished applying the handcuffs. Even after he was handcuffed, the Complainant repeatedly tried to turn on his side and address the officers. NE#4 asked the Complainant whether he would give the officers problems if they stood him up. The Complainant responded "shut up." The officers stood him up and the Complainant said "what the fuck are you doing that for" and "what the fuck is your problem." The officers moved him towards the patrol vehicle and NE#4 stated "shut up." After they walked a few steps, the Complainant went limp and down to the ground.

Approximately five seconds after he went down to the ground, the officers lifted him up by his legs and arms and carried him to the patrol vehicle. The Complainant complained of pain multiple times. He then stated that the officers broke his wrist. He was placed in the patrol vehicle, face-forward, with his chest against the seat. His feet remained outside of the vehicle. The officers tried to force his body inside, with NE#2 holding his feet. Complainant kicked at the officers at that time. NE#2 told him to stop kicking. NE#2 then stepped back and stated to the Complainant: "If you kick me again, I'm going to put my foot up your ass."

The officers called for a supervisor and for medical attention given the Complainant's allegation that he broke his wrist. The officers then again pulled the Complainant up and walked him to the patrol vehicle. They read him his Miranda warnings and he continued to pull away from the officers. They tried to walk him to the curb to sit him down and he again pulled away from the officers. Medics arrived at the scene and, at that point, the Complainant was calmer. After the medical examination, no structural injuries were found to the Complainant's wrists or arms. His handcuffs were switched to make them more comfortable and he was transported to the jail in an ambulance.

During a later force review, an Administrative Lieutenant identified the Complainant to be making a possible allegation of excessive force and noted that NE#2 and NE#4 may have engaged in unprofessional conduct. She also noted in her force review that further de-escalation could have been used before the officers used force to carry the subject to the patrol vehicle. She referred these matters to OPA. The Force Review Board (FRB) also reviewed this case and agreed with the Administrative Lieutenant that there was a possible failure to de-escalate. FRB also made a referral to OPA. This referral is being investigated under a separate case – 2018OPA-0428.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

In her review of the Named Employees’ force, an Administrative Lieutenant wrote the following:

Officers located [the Complainant] and waited for additional officers to arrive before contacting [the Complainant]. [The Complainant] is known to officers and has a reputation for running from police. Throughout the first portion of the arrest, officers



used verbal de-escalation telling [the Complainant] to relax, calm down and stop resisting. When [the Complainant] decided to sit down while walking to the patrol vehicle, de-escalation was still feasible prior to the four officers carrying [the Complainant] and attempting to place him in the patrol vehicle but little attempt was made during this portion of the arrest.

The FRB agreed with the Administrative Lieutenant and further noted that this issue was not addressed by the officers' chain of command.

While all of the Named Employees generally discussed de-escalation in their use of force reports, none of them provided any explanation for how they de-escalated prior to using force to lift the Complainant off of the ground and carry him to patrol vehicle. This was a factor informing the referral to OPA – notably, that it was unclear from the officers' reports what efforts they used to de-escalate prior to this force being used and whether and why they believed that further de-escalation was no longer safe and/or feasible.

At their OPA interviews, the officers universally stated that further de-escalation prior to using force to carry the Complainant to the patrol vehicle was not safe or feasible. They contended that they tried to reason with the Complainant throughout the interaction, including trying to convince him to comply with their directions to stop resisting and to allow himself to be arrested. They noted that the Complainant was aggressive and resistive regardless. They stated that he had previously fled from the officers and that they believed that, had they not used force to restrain him, he would have tried to do so again, putting both the officers, himself, and nearby community members at risk of harm.

I disagree with the Named Employees that further de-escalation was not safe. I do not believe that there was any risk of harm to the officers had they continued to reason with the Complainant, called for additional resources, or summoned an ambulance to transport him to the jail instead of trying to force him into the patrol vehicle. This was particularly the case given that there were multiple officers surrounding the Complainant and he was handcuffed prone on the ground

I find the officers' claim that de-escalation was not feasible at that point to be the more convincing argument, even if not overly compelling. The officers asserted that this was the case given the Complainant's lack of responsiveness and cooperation, as well as based on his ongoing physical resistance. They asserted that further discussion would have been useless given the Complainant's demonstrated refusal to comply with their orders. While this may be the case, I note that the Complainant and the scene was static at the time he was carried to the patrol vehicle. Even though the officers wanted to get the Complainant into the patrol vehicle and away from the scene, there was no immediate need to do so. The Complainant did not pose a true physical threat to the officers or anyone else at that time. There was no reason that they could not have waited longer and employed other tools set forth in the de-escalation policy prior to using force to carry the Complainant to the car. Indeed, this is the confusing nature of feasibility in the context of the de-escalation policy. This term is not defined and, viewed broadly, there is virtually no scenario, other than that in which there is a fast-evolving situation, where further de-escalation is not feasible.

While ultimately a close call, in OPA's opinion, the officers did not violate the de-escalation policy in this case. This decision is reached based on the following factors. First, I credit the officers' contention that, at the time of the incident, they did not reasonably believe that further de-escalation was feasible. Second, I note that only five



seconds elapsed from when the Complainant purposefully went limp until when the officers carried him to the patrol vehicle, which suggests that they did not even view this as a separate application of force for which they were required to first attempt de-escalation. Third, while an untrained tactic and while it resulted in a complaint of pain (that was ultimately unfounded), the force used to carry the Complainant to the patrol vehicle was not significantly greater than that used to initially secure his person and to handcuff him. As such, there was no true escalation of force here. Fourth, all of the officers were CIT trained and a number of officers were already at the scene dealing with one subject. As such, I do not think it would have made any difference had the Named Employees waited for more CIT certified officers to arrive. Fifth, the Complainant was unresponsive to the officers' attempts to reason with him and it seems likely that LEED or other verbal skills would have been similarly ineffective. Sixth, and last, even if performed quickly, the officers appeared to put together a tactical plan for how they were going to get the Complainant into the patrol vehicle and then worked cohesively together to carry out that plan.

In many respects, this is one of the more unique de-escalation cases that I have seen, particularly given the relatively low level of force used. That being said, it was properly identified and referred as a possible failure to de-escalate given a preliminary review of the Department video and the lack of any explanation from the officers for why de-escalation was no longer safe and/or feasible. While ultimately a close call, given my review of the totality of the evidence and based on the substance of the Named Employees' OPA interviews, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #1

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #3 - Allegation #1

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #4 - Allegation #1

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**